

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS
CLERK'S OFFICE

EDWARD TAVARES JR
(PETITIONER)

v.

STEVEN O'BRIEN
(RESPONDENT)

2004 CIV 40059 P 12: 2b

U.S. CIVIL ACTION
NO. 04-40059-FDS

PETITIONER AFFIDAVIT IN SUPPORT
OF HIS "MOTION TO AMEND HIS PETITION TO INCLUDE ONLY
EXHAUSTED CLAIMS:

I Edward Tavares Jr. is the pro-se petitioner in this matter to depose and say, that all is stated in this affidavit is true and signed under the pains and penalties of perjury, as stated in the following....

- 1) I Edward Tavares Jr. is the pro-se petitioner who caused and filed his petition for Writ of Habeas Corpus 28 U.S.C.A.2254 and 2255, filed on April 26/2004, SEE EXH-A Docket entry sheet).
- 2) On April 28/2004 Judge Nathaniel M.Gorton order that respondent will respond and filed responsive pleading within 20 days of receipt. SEE EXH-A Docket entry sheet).
- 3) On May 18/2004 the respondent filed Motion and memorandum of law to order the petitioner to submit petition in complaince with 28 U.S.C.S.2254 Rule 2(c), SEE EXH-A Docket entry sheet).
- 4) On June 10/2004 Notice of reassignment, case reassigned from Judge Gorton to Judge F.Dennis Saylor,IV upon appointment to the bench, SEE EXH-A Docket entry sheet).
- 5) On September 8/2004 Judge F.Dennis Saylor IV:Electronic Order entered granting 4 Motion for order, SEE EXH-A Docket entry sheet).
- 6) On September 22/2004 the petitioner comply with the order and filed amended petition for writ of habeas corpus pursuant to 28;2254, filed by Edward Tavares Jr. SEE EXH-A Docket entry sheet).
- 7) On October 22/2004 Motion from respondent , to request order for court date set for response to Habeas Corpus petition by Steven O'Brien, (Smulow,Daniel), SEE EXH-A Docket entry sheet).
- 8) On October 22/2004 Judge F.Dennis Saylor IV :Electronic Order entered granting 11 Motion for court order, response due 11/22/04, SEE EXH-A Docket entry sheet.

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9)On November 10/2004 respondent Steven O'Brien attorney Daniel I Smulow ,Respondent's"Motion for order to petitioner to Amend petition to include Only Exhausted Claims,also filed a memorandum of law.

10)Petitioner Edward Tavares Jr.depose and say that he is not an attorney,but a state prisoner who has filed his Writ of Habeas Corpus 28 U.S.C.2254 and 2255, and he did not know he had errored, and submitted an issue which was not exhausted in the state court, but he is willing and happy to resubmit his petition with the correction of his petition by amended and deleting non exhausted claims.

11)Petitioner Edward Tavares Jr.not knowing the procedure and has error in presenting an issue which has not been exhausted in state court, the petitioner apologize to the court an respondent and prays this honorable court to allowed the petitioner to amend his petition and delete issue claim (D) The trial Judge should have recused himself because he had represented the petitioner in a previous sexual assault conviction as result of the trial judge's prior involvement with Mr.Tavares , a substantial risk of a miscarriage of justice occurred.

12)Petitioner prays that this honorable court allow the petitioner to amend petition, as the respondent will not be prejudice, by such allowance of the amended motion which is attached herewith, and the petitioner direct this court attention to his memorandum of law. The court should allow such amended petition, as the respondent request and neither parties would be prejudice.

13)Petitioner depose and say issue claim (D)is true , but must be deleted because not exhausted in the state court.

All the above said is true and signed under the pains and penalties of perjury on this 30 day of November 2004:

PRO-SE

RESPECTFULLY SUBMITTED

MR. EDWARD TAVARES JR
P.O.BOX 466
GARDNER MASS.01440